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State of New Mexico
ENVIRONMENT DEPARTMENT

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 ENTERED



RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 26, 2004

Mr. R. Paul Detwiler, Acting Manager
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Dr. Steven Warren, President
Washington TRU Solutions, LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

**RE: REQUEST FOR INFORMATION
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Mr. Detwiler and Dr. Warren:

Pursuant to Section 74-4-4.3.A of the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, section 74-4-1 et seq., and Section 3007(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., NMED hereby requests that the U.S. Department of Energy Carlsbad Field Office (CBFO) and Washington TRU Solutions LLC (WTS) provide NMED the below-listed information concerning activities at the Waste Isolation Pilot Plant (WIPP) within thirty (30) days of receipt of this letter.

Section 74-4-4.3.A of HWA provides that "[f]or the purposes of developing or assisting in the development of any rules, conducting any study, taking any corrective action or enforcing the provisions of the Hazardous Waste Act, upon request of the secretary or his authorized representative, any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such hazardous wastes. . . ." Likewise, section 3007(a) of RCRA provides that "[f]or purposes of developing or assisting in the development of any regulation or enforcing the provisions of [RCRA], any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any . . . duly designated officer, employee, or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes. . . ." 42 U.S.C. § 6927(a).



On January 22-23, 2004, NMED staff members conducted a Compliance Evaluation Inspection of the WIPP facility. During the inspection, NMED staff observed that WIPP personnel had failed to close an open container labeled as containing hazardous waste, located near the bottom of the Waste Handling Shaft at the Satellite Accumulation Area. NMED subsequently issued a Notice of Violation (**NOV**) and Resolution letter on July 20, 2004, noting that the violation cited had been adequately addressed and that no further action was required. The NOV was later rescinded.

NMED requests that CBFO and WTS provide the following information and supporting documentation associated with the collection of liquids from near the bottom of the Waste Handling Shaft:

1. Describe the circumstances under which collection of liquids from near the bottom of the Waste Handling Shaft began. Provide all correspondence and other documents describing the initial decision to collect these liquids, including a chronology of events leading up to the establishment of a collection system.
2. Document the history of collecting liquids from near the bottom of the Waste Handling Shaft at the Satellite Accumulation Area. For each container ever used to collect liquids, provide documentation of the time period of collection, analytical results, hazardous waste determinations, and final disposition of liquids from the container.
3. Describe the circumstances under which it was determined that the open container observed near the bottom of the Waste Handling Shaft during the NMED inspection should be labeled as hazardous waste. Include all information used to make this initial hazardous waste determination prior to the NMED inspection.

Your compliance with this information request is mandatory. Failure to respond fully and truthfully within the time specified herein, or adequately justify such failure to respond, may result in an enforcement action by NMED pursuant to Section 74-4-10 of HWA, or Section 7002(a)(1)(A) of RCRA (42 U.S.C. § 6972(a)(1)(A)) or both. Both HWA and RCRA provide for the imposition of civil penalties for noncompliance. Section 74-4-12 of HWA provides that any person who violates any provision of HWA "may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs." See also NMSA 1978, § 74-4-10.A and B. Section 3008(g) of RCRA provides that any person who violates any requirement of RCRA shall be liable for a civil penalty not to exceed \$27,500¹ for each such violation. 42 U.S.C. § 6928(g). Both HWA and RCRA also provide for criminal fines and imprisonment for knowingly omitting material information or making a false statement or representation in any document used for compliance with HWA or RCRA. NMSA 1978, § 74-4-11.A(3); 42 U.S.C. § 6928(d)(3).

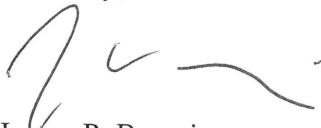
¹ Although this provision of RCRA on its face provides for a civil penalty not to exceed \$25,000, the maximum penalty has been increased to \$27,500 to account for inflation pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3107 note. 40 C.F.R. § 19.4, Table 1.

CBFO and/or WTS may claim confidentiality for any information required by this information request pursuant to the requirements of Section 74-4-4.3(D) and (F) of HWA, 42 U.S.C. § 6927(b), and 20.4.1.100 NMAC (incorporating 40 CFR 260.2).

Please submit your response to me at the address on the letterhead within 30 days of receipt of this letter.

Thank you for your cooperation in this matter. If you have any questions regarding the information request, please contact Steve Zappe of my staff at (505) 428-2517.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: John Kieling, Manager, Permits Management Program, HWB
Steve Zappe, NMED HWB
Chuck Noble, NMED OGC
Laurie King, EPA Region 6
Connie Walker, Trinity Engineering
WIPP File - Red '04